IN THE HIGH COURT OF DELHI

CM(M) No. 1156/2007

M/s. Batercard India Pvt. Ltd. ..... Petitioner
! through: None

VERSUS

$ J.S.Bali (HUF) ..... Respondent
^ through : Mr.V.K.Sharma, Advocate

% DATE OF DECISION: 12.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)
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1. Vimla Bali, acting pursuant to a power of attorney executed in her favour by her sons Vivek Bali & R.F.Bali executed a lease deed in favour of M/s. Bartercard Pvt. Ltd. on 4.9.2002 pertaining to ground floor of premises bearing No. C-66, Defence Colony, New Delhi. The lease is a registered lease. Aforesaid fact of Vimla Bali acting under a power of attorney on behalf of the lesser J.S.Bali (HUF) is so recorded therein.

2. She filed a suit for ejectment and mesne

profits/damages for continued occupation of the property by the tenant. She stated in the plaint that she was acting on behalf of the plaintiff 'J.S.Bali (HUF)'. Along with the suit she did not file the power of attorney pursuant whereto she had executed the lease deed dated 4.9.2002, nor any other power of attorney was filed. Issue came up whether the suit was duly instituted by a person competent to institute the suit. I may note that suit was filed on 17.5.2005.

3. When arguments were being advanced pertaining to the entitlement of Vimla Bali to institute the suit on behalf of J.S.Bali (HUF), under cover of an index dated 28.3.2006 3 powers of attorney dated 8.12.2005, 15.3.2000 and 15.3.2000 were filed. The power of attorney dated 8.12.2005 evidenced that Vimla Bali was empowered to deal with the subject property including the right to institute suits and sign plaint should there be litigation in respect of the subject property.

4. Without considering the said documents which were filed under cover of an index dated 28.3.2006, vide order dated 7.4.2006 learned Trial Judge held that the suit was not duly instituted by a competent person.

5. Review thereof was sought interalia pointing out that requisite powers of attorney were filed under cover of an index

dated 28.3.2006 but as a matter of fact documents were filed on 28.1.2006. On the index it was wrongly written that the documents were being filed on 28.3.2006. Be that as it may, it was pointed out that the documents in question were filed prior to 7.4.2006 when order review whereof was sought was passed.

6. Taking note of the record of the court, learned Trial Judge reviewed the order dated 7.4.2006 and on 15.12.2006 recalled the order dated 7.4.2006 holding that in view of the powers of attorney which were already on record the suit was duly instituted by a competent person.

7. Appeal against order dated 15.12.2006 filed by the defendant stood dismissed vide impugned order dated 11.5.2007.

8. Defendant has invoked remedy under Article 227 of the Constitution of India challenging the order passed in review as also the order passed in appeal.

9. Since trial court record has been summoned, I have perused the same. At page No. 261 of the record of the trial Judge is the index of the documents filed by the plaintiff bearing the dated 28.3.2006, but stamp of the court evidences that the documents under said index were actually received in

court on 28.1.2006.

10. The date 28.1.2006 and 28.3.2006 are both irrelevant for the reason whatever be the date, documents were placed and were before the learned Trial Judge when order dated 7.4.2006 was passed.

11. The powers of attorney dated 8.12.2005 empowers Vimla Bali to represent and act on behalf of J.S.Bali (HUF). The powers of attorney dated 15.3.2000 also so empowers her to deal with the suit property but excluding the right to sue.

12. But the power of attorney dated 8.12.2005 not only authorized her to sue but even ratifies the powers and acts performed by her acting under the earlier power of attorney(s).

13. That apart, issue of ownership and entitlement of the plaintiff as owner of the suit property is irrelevant for the reason suit seeks recovery of possession filed by the landlord. Status of Vimla Bali to represent the landlord flows from the lease deed in question wherein right was created in favour of the defendant to occupy subject property. This right was under the authority of Vimla Bali.

14. Lastly, I may note that this court would not even otherwise be inclined to exercise its power under Article 227 of the Constitution of India for the reason no miscarriage of justice

has resulted as a consequence of the impugned order being

passed.

15. The petition is dismissed.

16. Trial Court Record be returned forthwith.

November 12, 2007 **PRADEEP NANDRAJOG, J.**
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